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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 ROLAND E. GARCIA, doing business as  
13 "GARCIA INTERNATIONAL TRADING",

14 Plaintiff(s),

15 v.

16 DAVID COLEMAN, an individual, ; ANN  
17 COLE, an individual; AMERIVINE, INC., and  
18 DOES 1 - 100, ,

19 Defendant(s).

Case No. C 07-2279

**EX PARTE MOTION FOR  
ADMINISTRATIVE RELIEF  
(CONTINUANCE OF CASE  
MANAGEMENT CONFERENCE)  
[L.R. 7.10; L.R. 7.11]; MEMORANDUM  
OF POINTS AND AUTHORITIES;  
DECLARATION OF PHILIP J. TERRY;  
[PROPOSED] ORDER CONTINUING  
CASE MANAGEMENT CONFERENCE**

**Judge: Hon. Edward M. Chen**

20 EX PARTE MOTION FOR ADMINISTRATIVE RELIEF (CONTINUANCE OF CASE  
21 MANAGEMENT CONFERENCE) [L.R. 7-11]

22 Pursuant to U.S. Dist. Ct., Northern Dist. Cal., rules 7-11 and 7-10, Plaintiff ROLAND E.  
23 GARCIA dba GARCIA INTERNATIONAL TRADING respectfully requests that the initial  
24 Case Management Conference currently set in this matter for August 1, 2007, at 1:30 p.m. be  
25 continued to allow for 1) Defendants' to file responsive pleadings to the Summons and  
26 Complaint served via Notice of Lawsuit and Request for Waiver of Service of Summons and 2)  
27 allow for the parties to engage in a meaningful FRCP 26(f) initial conference after the  
28 Defendants filing of their responsive pleadings currently due July 24, 2007.

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1 MEMORANDUM OF POINTS AND AUTHORITIES EX PARTE MOTION FOR  
 2 CONTINUANCE OF CASE  
 MANAGEMENT CONFERENCE [L.R. 7-11]

3 U.S. Dist. Ct., Northern Dist. Cal., rule 7-11 provides that *"during the course of case*  
 4 *proceedings a party may require a Court order with respect to miscellaneous administrative*  
 5 *matters. . ."* Pursuant to rule 7-11 Plaintiff requests that the Initial Case Management  
 6 Conference set for August 1, 2007, be continued to allow for the appearance of defendants.  
 7 Defendants have not yet appeared in this matter and will not suffer any prejudice should  
 8 Plaintiff's ex parte request for the continuance of the Initial Case Management Conference be  
 9 granted. Because Defendants will not suffer any prejudice, granting of Plaintiff's ex parte  
 10 request is proper pursuant to U.S. Dist. Ct., Northern Dist. Cal., rule 7-10. As more particularly  
 11 set forth below, service of the initial complaint in this matter was delayed due to the  
 12 undetermined status of defendants' service address. Plaintiff has now accomplished service of  
 13 the Summons and Complaint and requests administrative relief to allow Defendants' filing of  
 14 their responsive pleadings and to allow the parties sufficient time to engage in a meaningful  
 15 FRCP 26(f) initial conference.

16 DECLARATION OF DAWN M. ROSS  
 17 IN SUPPORT OF EX PARTE MOTION FOR  
 CONTINUANCE OF CASE MANAGEMENT CONFERENCE

18 I, Philip J. Terry, declare as follows:

19 1. I am an attorney with the law firm of Carle Mackie Power & Ross LLP, attorneys  
 20 of record for Plaintiff ROLAND GARCIA dba GARCIA INTERNATIONAL TRADING.

21 2. I have personal knowledge of the facts set forth in this declaration and if called  
 22 upon I could and would competently testify as follows:

23 3. Plaintiff ROLAND GARCIA dba GARCIA INTERNATIONAL TRADING filed  
 24 a complaint in the above-entitled Court on April 26, 2007, naming defendants DAVID  
 25 COLEMAN, ANN COLEMAN, and AMERIVINE, INC.

26 4. The last day to complete service the Summons and Complaint pursuant to  
 27 F.R.C.P. section 4(m) is August 24, 2007. The Initial Case Management Conference is set in this  
 28 matter for August 1, 2007.

5. Plaintiff initially made several service attempts at Defendants' last known address in Santa Rosa, CA. After several failed attempts, Plaintiff attempted service at Defendants' last known business address where the process server was informed by the receptionist that Defendants' still kept an office and was also informed that Defendants' had a second residence in Palm Springs, CA. Substitute service was effected on the individual defendants at that time. Service attempts were also made in Palm Springs, CA.

6. Shortly after substitute service was effected on the individual Defendants, Plaintiff's counsel was contacted by counsel for Defendants who disputed effective process service but agreed to assist with the facilitation of service on all Defendants via Notice of Lawsuit and Request for Waiver of Service of Summons.

7. Service of the Summons and Complaint has now been accomplished. Plaintiff accomplished service via Notice of Lawsuit and Request for Waiver of Service of Summons. Waivers were executed by each defendant on June 12, 2007, and responsive pleadings are due July 24, 2007.

8. Plaintiff has not obtained a stipulation for continuance of the Initial Case Management Conference since the defendants have not yet appeared.

I declare under penalty of perjury under the laws of the United States of America that foregoing is true and correct. Executed within the United States on this 10<sup>th</sup> day of July, 2007.

CARLE, MACKIE, POWER & ROSS LLP

PHILIP J. TERRY (148144)  
Attorneys for Plaintiff

**ORDER CONTINUING CASE MANAGEMENT CONFERENCE**

Having read and considered the foregoing EX PARTE MOTION FOR ADMINISTRATIVE RELIEF (CONTINUANCE OF CASE MANAGEMENT CONFERENCE), and GOOD CAUSE APPEARING,

The Court hereby continues the Initial Case Management Conference and related deadlines from August 1, 2007, to October 17, 2007. at 1:30 p.m. A

IT IS SO ORDERED.

DATED: 7/12/07

joint CMC  
statement is due  
10/7/07

The Honorable Edward M. Chen  
Magistrate Judge, U.S. District Court

